89-672

No. _____

IN THE

Supreme Court of the United States

OCTOBER TERM, 1989

CHURCH UNIVERSAL & TRIUMPHANT, INC., AND ELIZABETH CLARE PROPHET,

Petitioners,

—v.—

LINDA WITT, Executrix of the Estate of Gregory Mull,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEAL OF THE STATE OF CALIFORNIA, SECOND APPELLATE DISTRICT

ERIC M. LIEBERMAN
Counsel of Record
DAVID B. GOLDSTEIN
RABINOWITZ, BOUDIN, STANDARD, KRINSKY & LIEBERMAN, P.C.
740 Broadway, 5th Floor
New York, New York 10003
(212) 254-1111

Counsel for Petitioners

October 26, 1989

QUESTIONS PRESENTED

1. Whether the First Amendment speech and religion clauses prohibit state courts from imposing tort liability upon non-fraudulent religious speech and peaceful religious practices by permitting juries to determine that such speech or practices are "outrageous"?

2. Whether peaceful and voluntary religious practices—such as prayer, chanting, attendance at religious retreats, fasting, vegetarian diet, and religious teachings—may form the predicate for tort liability based upon a claim that such practices constitute a "thought reform program" or "coercive persuasion"?

3. Whether, under *United States* v. *Ballard*, 322 U.S. 78 (1944), the First Amendment requires a trial court to prohibit a party from inflaming jury prejudice against a church's unusual and unorthodox religious beliefs and practices through ridicule and denigration and by attempting to instill fear and hatred against the religion and its practices?

4. Whether reversal of a jury's general verdict against a church is required, where the jury was asked to decide claims based upon evidence of conduct both protected and unprotected by the First Amendment, especially where the church's request for a special verdict was denied by the trial court?

PARTIES TO THE PROCEEDINGS BELOW AND RULE 28.1 LIST

The parties to the proceedings in the California Court of Appeal and the California Supreme Court were:

Church Universal & Triumphant, Inc.
Elizabeth Clare Prophet
Linda Witt, as Executrix of the Estate of
Gregory Mull

Church Universal & Triumphant, Inc. is a not-for-profit corporation, with no parent or non-wholly owned subsidiaries. It is affiliated with The Summit Lighthouse, Inc.; Summit University; Church Universal & Triumphant, Minneapolis/St. Paul Region, Inc.; and Church Universal & Triumphant, The Vicar of Christ, Incorporated Sole, all non-profit corporations.

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PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEAL OF THE STATE OF CALIFORNIA, SECOND APPELLATE DISTRICT

The Church Universal & Triumphant, Inc. and Elizabeth Clare Prophet Francis petition for a writ of certiorari to review the judgment of the Court of Appeal of the State of California, Second Appellate District.

OPINIONS BELOW

The order of the Supreme Court of the State of California denying a petition for review is unreported (1a).[1] The opinion and judgment of the California Court of Appeal, Second Appellate District (3a-24a) and the order of that court denying a petition for rehearing (2a) are unreported. The June 3, 1989 order of the Superior Court of the State of California denying motions for a new trial and a judgment notwithstanding the verdict (25a) is not reported.

JURISDICTION

The judgment of the Court of Appeal of California, Second Appellate District, affirming the judgment of the Superior Court of California, was entered on April 10, 1989 (3a). The court of appeal denied a timely petition for rehearing on May 8, 1989 (2a). On June 28, 1989, the Supreme Court of California denied a timely petition for review (1a). On September 10, 1989, Justice O'Connor extended the time for filing a petition for certiorari to and including October 26, 1989. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISION INVOLVED

The First Amendment to the United States Constitution provides, in relevant part, that:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech . . . .

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1 References to "_____a" are to the Appendix to this petition. Citations to "R.T. _____" are to the 12-volume Reporters' Transcript on Appeal; citations to "Ex. _____" are to the Superior Court designation of exhibits.

STATEMENT

In this lawsuit, Gregory Mull, a former member of the Church Universal & Triumphant ("the Church"), has successfully sued the Church and its spiritual leader for over $1.5 million for injuries allegedly suffered, at least in major part, as a result of his conversion to the beliefs of the Church, of his becoming an active member in the Church, and his subsequent bitter disillusionment with the practices and beliefs of the Church. This lawsuit attacked core religious beliefs and practices—including peaceful voluntary conversion practices, the religion's central religious practice of decreeing, and threats and fears of divine retribution and expulsion from the Church—upon tort claims of, *inter alia*, fraud and intentional infliction of emotional distress. The opinion of the state court of appeal, which upheld this jury verdict despite numerous findings of error, constitutes an unprecedented threat to the free exercise of religion of minority religious organizations and their members.

1. Church Univeral & Triumphant is a religious organization that is based upon modern and ancient beliefs and teachings from both Eastern and Western religions. The religion traces its spiritual roots in part to the "I Am" movement. *See United States* v. *Ballard*, 322 U.S. 78 (1944); (R.T. 2306, 2311).[2] The spiritual leader of the Church is Elizabeth Clare Prophet Francis ("Mrs. Francis"), a cross-defendant in this case. According to the Church's religious beliefs, Mrs. Francis is the Messenger of the Ascended Masters, who include important religious figures from Eastern and Western religions (R.T. 480-86). As Mes-

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2 The religious bona fides of the Church were established at the start of this proceeding, and were never challenged by Mull during the trial. The Church filed a motion *in limine* "to preclude any evidence regarding the content or validity of the Church's religious beliefs, practices and teachings" (R.T. 24). The trial court ruled, "We are not going to litigate the validity of the beliefs of the Church or its adherence [sic] or the validity of their practices and teachings" (*Ibid.*). Unfortunately, the trial itself proved to the contrary.

Ironically, whereas *Ballard* established the principle that the judiciary may not inquire into a religion's truth or falsity, the Ballards' spiritual descendants were subjected to what can only be described as a modern-day and unconstitutional heresy trial. *See Ballard*, 322 U.S. at 86.

senger, Mrs. Francis receives communications, or "dictations," from the Masters, which she then communicates to the Church's adherents (R.T. 482); *see* J. Melton, *Encyclopedia of American Religions* 620-21 (2d ed. 1987).

The central religious practice of the Church is "decreeing," which Mrs. Francis described as "affirmations and prayers that are taken from all the world's religions and they serve the basic purpose of prayer or affirmations" (R.T. 504), and as "affirmations in the name of God that invoke His light and love and peace" (R.T. 499). The purpose of decreeing is to place the person decreeing in "a receptive state to God" (R.T. 513). Decreeing involves very rapid, repetitive and rhythmic chanting similar to that of Eastern religions such as Shin Buddhism, Sikhism, and Hinduism (R.T. 2301-02). The Church teaches that members should strive to follow the teachings of the Church in order to make their ascension to Heaven (R.T. 85-86), and that violation of the laws of God may result in separation from God and the necessity for many more incarnations on Earth before one's ascension (R.T. 194). The Church also believes that decrees can be directed effectively at the evil forces that act upon Earth through individuals and institutions, and so control or exorcise these evil forces (R.T. 1609).

2. Mr. Mull had a lifelong interest in religion and the quest for God (4a).[3] In late 1974, when he was 53, Mull began attending Church services and decreeing at a Church-sponsored teaching center in San Francisco (R.T. 67, 75-80). He liked the teachings because they were strict (4a).

In January 1975, Mull attended a 12-week session at Summit University, a church-run intensive religious educational retreat, to learn the Church's teachings and to have his questions about God answered (13a; R.T. 84-88). Classes focused on "the central religious belief system" of the Church, and Mull "learned a new religion" (R.T. 91). Mull testified to long hours of decreeing, classes, and homework while at Summit University (R.T. 89-95, 102). According to Mull, by the end of this 12-week course, he was "controlled by the Church to the point where

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3 Virtually all the relevant facts in this case were sharply disputed. This recitation sets forth the facts most favorable to Mull or relies directly on Mull's own testimony, unless otherwise indicated.

[he] surrendered [his] free will," and he became the Church's "slave" (R.T. 251, 253).[4] This control was accomplished by decreeing, a vegetarian diet, insufficiency of sleep, fasting, colonics, and "the teachings themselves," because he "liked the teachings" and "believed in the teachings" (R.T. 270-71). From April 1975 to January 1979 (except for another similar 12-week course at Summit University in 1977), Mull lived at his home in San Francisco, controlled his own diet, sleep and work hours, pursued his profession as a building designer, and decreed about three hours a day by his own choice, which made Mull feel better about himself and the world (R.T. 271-74).

In January 1979, Mull moved to Camelot, the Church's headquarters in Calabasas, California, to work on various architectural projects (5a). According to Mull, he agreed to come if the Church would pay his expenses, including the upkeep of his residence in San Francisco, but he did not seek a salary or commission (5a).[5] Mull "felt good about it because I already was in the teachings and I felt elated and sought after" (R.T. 134, 301). The Church met Mull's expenses of about $4,000 per month through October 1979, at which time they totalled over $37,000 (R.T. 155, 193; Ex. 77A-77J).

In September and October 1979, Mull signed two promissory notes totaling $37,400, the amount advanced by the Church (R.T. 193-94; Ex. 59, 62). Mull testified that he did not believe he owed the Church money, but he signed the promissory note "out of fear . . . . I was afraid of many things that I was taught in the teachings. Ten thousand years in outer darkness and thousands of embodiments" (R.T. 194, 231-32, 2631-32). He also feared "that I would be removed from the Church. I loved Mother [Mrs. Francis] and I loved the Masters." (R.T. 671, 1935). After the sale of his house, Mull's nonpayment on the promissory notes continued. In May 1980, Mull was told to leave Camelot, at which point he moved into his nearby condominium (R.T. 195-96).

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4 Despite this "slave-like" control, Mull announced in September, 1975 that he was leaving the Church, which the Church did nothing to prevent. (R.T. 264-70; Ex. 16, 41).

5 The Church claimed that the payment of expenses was a loan, to be repaid upon the sale of Mull's house in San Francisco (5a), a position supported by Mull's contemporaneous writings (Ex. 27, 28).

Several weeks later, in June 1980, Mull attended a meeting with Mrs. Francis and two members of the Church's Board of Directors, cross-defendants Monroe Shearer and Edward Francis, Mrs. Francis' husband. This meeting was taped, copies of which were provided to Mull.[6] During the meeting, Mrs. Francis repeatedly referred to the Church's teachings with respect to fulfilling promises and not lying. At one point she told the New Testament story of Ananias and Sapphira, who died when Peter accused them of lying to God by pretending to give all their property to the Apostles (R.T. 589-91).[7] She explained that Mull was risking his ascension by failing to honor his obligation to the Church, and that she was not threatening or judging him, but only giving him a teaching (R.T. 476, 610). Mull repeatedly expressed concern over whether he would make his ascension, and Mrs. Francis replied that she was not his judge (R.T. 610; *see also* R.T. 199, 949, 1223, 1226 (Mull's fears on not making ascension)). Mull then paid the Church $5,000, plus $489 owed on his daughter's tuition bill, which Mull claimed was all the money he had at the time (R.T. 678-79).

After this meeting, and throughout the early 1980's, Mull traveled around the country, publicly attacking the Church.[8] At some point, Mrs. Francis allegedly labeled Mull the "beast of blasphemy and the serpent." Mull claimed this caused him to suffer great distress, fear, and anxiety, ultimately leading to his contracting multiple sclerosis (R.T. 53-54, 226, 1136-39, 1224-25, 1930, 2530, 2722-24).

3. The Church filed a complaint on March 3, 1981, seeking recovery on the promissory notes. On August 3, 1981, Mull filed a cross-complaint against the Church, Mrs. Francis,

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6 The tapes were played to the jury in their entirety (R.T. 569-704).

7 Holy Bible, New Testament, Acts 5:1-11 (King James ed. 1972). Mull asked if he would die if he did not fulfill his commitment, to which Mrs. Francis replied, "Absolutely not." (R.T. 591). At trial, Mrs. Francis again explained that the proper interpretation of the Biblical story "has nothing to do with whether or not this was property. It was that they had lied to the apostle." (R.T. 721).

8 At one point, Mull was ordered off Church property after he attempted to enter with several Church critics and a reporter during a public event, which gave rise to his assault claim. Mull also claimed that the Church harassed him in various ways after he left the Church.

Mr. Francis and Mr. Shearer for assault, intentional infliction of emotional distress, fraud, breach of fiduciary relationship, cancellation of note and recovery in *quantum meruit*.[9] In its First Amended Answer, the Church raised the First Amendment as an affirmative defense to Mull's claims. The Church's Trial Brief, submitted prior to trial, also asserted the First Amendment as a defense to the claims of intentional infliction of emotional distress, quantum meruit, and the theory of "coercive persuasion" that formed the heart of Mull's complaint.

Mull's trial strategy was built around two mutually supportive themes. First, Mull claimed that the Church used "coercive persuasion" to reduce Mull to a "slave" of the Church, as a consequence of which the various torts could be perpetrated against him. Second, Mull's counsel repeatedly ridiculed, denigrated, and misrepresented the Church's core religious practices and beliefs, with the intent of inciting the jury against this unorthodox and not widely known religion.

Mull's opening statement set the tone for the remainder of the trial (R.T. 48-55). Thus, the Church "conditioned" Mull to give his professional skills and his money "under the threat of spiritual damnation" (R.T. 51). "Mr. Mull became unduly stressed, and was made to fear damnation and the loss of his ascension and, in the terms of that Church, being cast into outer darkness" (R.T. 51). When Mull began to speak out against the Church, Mrs. Francis

> labeled him the beast of blasphemy and the serpent. And his biblical training and his religious training taught him to believe that the beast and the serpent were evil to be sought out and destroyed. And as a result of that, his fear for his own safety and the safety of his child stressed him so greatly that it triggered a stroke-like incident.

(R.T. 53-54). "Experts . . . will tell you the how and the why of his subjugation by this Church and these people" (R.T. 54).[10]

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9 Claims for common law involuntary servitude and extortion were nonsuited before trial (R.T. 16, 20).

10 Just prior to trial, Mull's counsel successfully defended the breach of fiduciary duty claim against a motion for judgment on the pleadings:

Mull's case focused on the contention that after 12 weeks at Summit University, Mull "returned home subservient to appellants' domination" (Respondent's Brief on Appeal, at 4). Thus, Dr. Margaret Singer testified to the seven features of a "cult," concluded that the Church was a "cult" (R.T. 1273-79),[11] and "that the practices, the behavior, the conduct carried out in Church Universal and Triumphant is the carrying out of a thought reform program" (R.T. 1281), which she defined as

> a systematic manipulation of social and psychological influence techniques of many kinds to get a person to drop their old belief system, whether it is a belief system about science or a belief system about how the world works or a belief system about psychology or politics, to . . . express the new belief system that management within the thought reform organization wants.

(R.T. 1281).

Rabbi Stephen Robbins testified to similar effect, describing involvement in "new age" religions as "the ultimate of addictive behavior" equivalent to drug addiction (R.T. 1125). This "addiction" is accomplished by "routinized behavior" such as "chanting or meditating or studying or group activities" (R.T. 1125), and "the fix" is provided "spiritually and emotionally"

> Mr. Levy: Does not a spiritual leader inform their parishioners that what they will do is intercede for them with the Almighty and is not that an obligation to do something?
>
> We are talking about a property right . . . the right to feel the confidence and the peace of mind, the assurance that through their faith and through the interception of their spiritual leader, that the trip to heaven will not be too rocky (R.T. 10).

The Church's objection to this claim on grounds of protected religious activity was denied. (R.T. 12, 14).

11 These seven features are: a self-appointed leader; veneration of the leader; fundraising and recruitment as opposed to "service and altruism"; a double set of ethics between leaders and followers; elitism in that members are considered superior to outsiders by virtue of being members; "totalitarian" control by the leader; and "totalistic" rules "cover[ing] almost every feature of living" (R.T. 1273-74). *Compare* T. Wolfe, *In Our Time* (1980): "A cult is a religion with no political power," *quoted in Developments in the Law: Religion and the State*, 100 Harv.L.Rev. 1606 (1987).

(R.T. 1126). He testified that Mull suffered severe damages to "his sense of spirituality" as a result of his condemnation upon leaving the Church (R.T. 1136). He concluded that "their judgments of him that he was the beast of blasphemy and the serpent had such a profound affect [sic] on Gregory that his capacity I think to find his way in the world became severely damaged" (R.T. 1137). Mull was "damaged by religious excesses," and his habit of "tongue thrusting . . . . could be a result of his identifying with the judgment that he is the serpent" (R.T. 1138-39).

Ms. Levy, Mull's counsel's wife and a hypnotherapist, testified that Mull was hypnotized by decreeing at Summit University (R.T. 1219-8). She also testified that a religious ceremony performed at the end of the 12-week Summit University course could result in "shock induction," which is "a deep state of hypnosis" (R.T. 1219 to 1219-6).[12]

Throughout the proceedings, Mull's counsel ridiculed the Church's beliefs and practices and used them to instill fear and prejudice in the jury. Thus, over objection, Mr. Francis was required to testify that he considered himself to be the reincarnation of Captain Cook, to which counsel responded, "Let me ask you this one as Mr. Francis instead of Captain Cook" (R.T. 2272). Testimony that Mrs. Francis had an adulterous affair during an earlier marriage, introduced to impeach Mrs. Francis, was admitted over objection because, according to the trial court, "we are dealing with somebody who holds herself out to be a messenger of God" (R.T. 780, 778-80). Over objection, a lengthy decree, which contained numerous bizarre-sounding names and phrases, was read (R.T. 1099, 1569-74), a tape of a

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12 The Church's expert witnesses emphasized that "coercive persuasion" is meaningless without the explicit or implicit threats of violence and physical control such as experienced by POWs in Korea, none of which was present here; that they saw no evidence of thought reform or hypnosis in the Church's practices; that all religions aim to manipulate the behavior of their adherents, but that members freely leave when they become disillusioned or otherwise decide to leave; and that intensive indoctrination is a common feature of conversion from one religion to another, whether "new age" or "mainstream", and that this Church's practices such as colonics, vegetarianism, fasting, chanting, and scheduled activities were common to many religious groups (R.T. 1746-48, 1761, 1781-85, 1832, 1888, 1892-93, 1906, 2301-05, 2326, 2336-37, 2424-26).

decree was played (R.T. 230), counsel purported to recreate a part of a religious ceremony, replete with a sword and decree (R.T. 1219-1), and a witness demonstrated what he contended was a Nazi-like salute (R.T. 919). Further, counsel insinuated that the Church was an illegitimate "mail order operation" "converted" from the "I Am movement" (R.T. 2009-10), and then, over objection, asked the witness if there was any way to verify the messages and their sources that Mrs. Francis claimed came from the Ascended Masters (R.T. 2011).

Through witness after witness, Mull attempted to show that Church members decreed "against" others, and Mull in particular, and one witness after another was forced to explain the Church's religious teachings concerning the energy forces of good and evil and how they interact and operate in the world and how decreeing could affect those forces (R.T. 833, 970, 1032-33, 1097-98, 1416, 1473-75, 1532-33, 1537, 1568-74, 1609, 1640, 1673-74, 1708-09). When one Church member stated that members sometimes decree against the "forces behind people" (R.T. 1532), counsel mocked this belief before the jury: "You said the energy behind somebody. I am going to turn around slowly. Maybe you can tell me whether there is something back behind me" (R.T. 1533). Counsel asked a Church member: "Where do you get this information? Did it come like Elizabeth's information, from outer space?" (R.T. 1523).

Mull continually attacked Mrs. Francis' spiritual leadership claims. When she stated she could not give Mull the Kingdom of Heaven, counsel asked "Well, after all, you are the Messenger, aren't you? You are God's chosen on earth. Why is it impossible for you?" (R.T. 725). He ridiculed her claim that she was called to move the Church to California by Jesus Christ: "He was involved in the acquisition and the moving with all the other property also?" (R.T. 2616). Finally, counsel made deliberate, repetitive references or elicited testimony purporting to link the Church to Jonestown and Nazi Germany (R.T. 919, 1205, 1262, 1405-06, 1810, 1952, 2322-23).

While professing that the Church's religion was not on trial (R.T. 2689), counsel's closing remarks demonstrated that the heart of Mull's case was predicated upon the Church's core practices and beliefs:

Elizabeth gets the word on high. Asked Mr. King if the word came down in special delivery letters. Maybe the post office is at fault. (R.T. 2702).

Do you find it just a little bit strange that the Archbishop of the Church who was there for some 12 to 15 years thought it was time to move on . . . ? Good Lord, the next thing we will hear is the Pope is leaving Rome. It is time to move. He's got a job as a disk jockey (R.T. 2707).

And whether they decree against your energy or your body or your back or your shoulder or your arm or whatever part of you it is, they decree against you (R.T. 2708).

We heard Elizabeth Clare Prophet tell us that decreeing made the people receptive. What do you think it was they became receptive to? (R.T. 2709).

And what did he know would happen to him if he violated the tenets of his religion? . . . we heard about 10,000 years of outer darkness and reembodiments and all that stuff that would or could or might happen. (R.T. 2716).

[I]n 1984 when Gregory came in, he called [Ms. Levy, counsel's wife] and he was terrified. What did he testify to? He had been called the beast of blasphemy and the serpent . . . . Most of you have noticed Gregory's tongue, how it darts out.

Was there some kind of emotional or psychological implication there, the serpent? Was the impact so strong that Gregory bought what was told to him? Did he become the serpent? Did he become that in his own mind? (R.T. 2722).

Elizabeth Clare Prophet would have liked to have thought of herself as the witness. . . . Wasn't Jesus or anyone else who said she was special. It was herself. (R.T. 2723).

When Elizabeth Clare Prophet went to the trouble in a dictation to label Gregory the beast of blasphemy. . . . It scared him enough that he went into a panic. And it may have been that panic and the stress therefrom that put him in the hospital and made Gregory what he is now. (R.T. 2724).

> Yeah, I talked about God. Since this trial has to do with the Church, maybe God has intervened . . . . By [Mull and Randall King] telling the truth here, that God's work really is being done. (R.T. 2730).
>
> Where is El Morya [an Ascended Master]? Who in this courtroom talks to El Morya? Sitting right over there on that side is El Morya. (R.T. 2786). It is a tent show. It is a great tent show (R.T. 2790).

Following nine days of deliberation, on April 2, 1986, the jury, by an 11-1 vote, awarded Mull $521,100 compensatory damages against the Church and Mrs. Francis, and $521,100 punitive damages against the Church and $521,100 punitive damages against Mrs. Francis (R.T. 2863, 2866).[13] The verdict was entered that day.

Petitioners' motions for a new trial and for judgment notwithstanding the verdict, both of which argued that the "coercive persuasion" theory, and liability on the fraud and emotional distress claims were inconsistent with the First Amendment, were denied on June 3, 1986 (25a).

On appeal, the Church argued that substantial evidence and counsel's argument permitted the jurors to evaluate religious beliefs and practices and held the Church up to ridicule, scorn, fear, and hatred; and that the "coercive persuasion" theory and the fraud, intentional infliction of emotional distress and *quantum meruit* claims are barred by the First Amendment.[14]

The court of appeal affirmed (3a-24a), despite finding numerous evidentiary errors, each of which the court held to be harmless. In evaluating the First Amendment claims, the court drew a hard and fast line between religious beliefs and reli-

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13 The jury also found for Mull on the Church's claim on the promissory note. The trial court rejected the Church's request for a special verdict (R.T. 2793-94).

14 The Church also contended that where First Amendment error is committed at trial, reversal is required unless the appellee can show the error is harmless, under *Chapman* v. *California*, 386 U.S. 18 (1967). On petition for review to the California Supreme Court, the Church both preserved this claim and recast it in a somewhat modified form, arguing under *Stromberg* v. *California*, 283 U.S. 359 (1931), that, if the verdict may have rested upon constitutionally impermissible reasons, the verdict must be reversed.

giously motivated conduct (15a), nowhere recognizing that restrictions on the latter must be subjected to exacting judicial scrutiny.

The court held that evidence of the 12-week program of "intensive indoctrination" regarding the Church's "beliefs and the standard of conduct expected of its members," which "induced members to uncritically accept demands made upon them by [Church] officials," was relevant to each of Mull's claims, except for assault (13a).

Testimony that decrees were lengthy chants whose purpose was, *inter alia*, to discipline and control Church members, was held to be proper impeachment testimony of Mrs. Francis, who testified to a more benign purpose for decrees (14a-15a). Testimony that the goal of certain decrees directed at persons or organizations was to get them to " 'act the way we wanted them to act' " was relevant and "not unduly prejudicial" (15a). The court found no error in the admission of the text of the decree on Personal and Impersonal Hatred because it found that the *beliefs* were not called into question, and the issue whether Mull was ever decreed against was relevant (15a).

The court concluded it was "not obvious" counsel intended to question the religious beliefs when he asked Mr. Francis if he was Captain Cook reincarnated (16a), that the evidence of Mrs. Francis' adultery was irrelevant, but harmless (10a), and that other evidence and statements did not amount to "impermissible ridicule of religious beliefs" (16a).

The court rejected the First Amendment defense to the fraud claim (19a). Nevertheless, it found Mull's reliance on representations to be justifiable because "Mull considered Prophet to be his spiritual leader," and "Mull believed Prophet spoke for God, and would have done anything she told him to do" (19a). The court upheld the intentional infliction of emotional distress claim *solely* by reference to the June 1980 meeting, finding that Mrs. Francis engaged in the "despicable" act of using her influence to "extract" from Mull over $5,000, using "constant and shameful pressures" (20a). The court did not state what these pressures were, but the transcript of that meeting is replete with

numerous references by Mrs. Francis to the Church's teachings and to implicit threats of divine retribution.[15]

A petition for rehearing to the court of appeal was denied on May 8, 1989 (2a). A petition for review to the Supreme Court of California was denied on June 28, 1989 (1a).

REASONS FOR GRANTING THE PETITION

The state court of appeal has decided an issue of fundamental importance to all religious groups and to religious freedom in this country in a way that is inconsistent with prior decisions of this Court and with the decisions of several lower federal and state courts. The lower state and federal courts have been deluged in recent years with litigation by ex-members of minority religions seeking damages based upon peaceful and voluntary religious practices. While the decision below is contrary to the decisions of many courts, frighteningly, it is not unique. Indeed, there have been a number of appellate cases in which similar claims have been upheld, albeit with caveats, modifications, or limited application. And the trial courts at both the state and federal levels almost uniformly refuse to dismiss or limit such claims, forcing churches to undergo costly litigation that intrudes into the core of religious belief and practice.

This case most clearly and squarely presents the pressing constitutional issue whether an ex-member of a religious organization may recover substantial monetary damages on tort claims of fraud and intentional infliction of emotional distress based, at least in major part, on a religious organization's peaceful and voluntary "indoctrination" practices and religiously-motivated speech.[16] This new theory of tort liability, based upon protected, but unorthodox and controversial, religious beliefs and conduct, presents an important question that is having a wide-

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15 The court made no reference to the First Amendment issue in upholding the *quantum meruit* claim. It also made no reference to the *Chapman* harmless error argument.

16 This is one of the few cases in which a jury verdict has survived state appellate review intact, and in which an appellate court explicity upheld liability on what petitioners contend to be constitutionally protected conduct.

spread and detrimental impact on religious liberty and practice and which requires a definitive resolution by this Court.

Petitioners assert that a court or jury may not award damages to an ex-member for the religious practices and conduct of his former church absent a compelling state interest and a showing that tort liability is the least restrictive means to achieve the state's interests. Where the religious practices at issue involve a member, are peaceful and non-violent, and where the member participated in the church voluntarily (*i.e.*, without being physically threatened or coerced), or where they involve religious speech concerning matters of belief or faith, then we are unable to conceive of circumstances in which it would be constitutionally proper to recognize a tort action in favor of the ex-member. Certainly Mull cannot meet the constitutional compelling state interest/least restrictive means test on the basis of the religious speech and conduct at issue here.

Petitioners also contend that the religion clauses prohibit attacks upon the credibility of witnesses through ridicule or denigration of religious beliefs, or incitement of a jury against a religious organization through comments or evidence of unusual beliefs and practices, even if the jury is not asked explicitly to impose damages based on the truth or falsity of the religious beliefs. Such tactics, which are commonly used to inflame juries against minority churches and unorthodox religious beliefs and practices, must not be permitted.

1. The court of appeal's refusal to provide any meaningful degree of constitutional protection to religious speech and conduct, as well as belief, is fundamentally contrary to the decisions of this Court. It is beyond question that the First Amendment religion clauses prevent judicial evaluation of the truth or falsity of religious beliefs or representations. *United States* v. *Ballard*, 322 U.S. 78, 86 (1944); *Founding Church of Scientology* v. *United States*, 409 F.2d 1146 (D.C.Cir.), *cert. denied*, 396 U.S. 963 (1969). It is likewise indisputable that the First Amendment protects religious conduct as well as beliefs. Indeed, the concept "free exercise" must, of necessity, include religious practices. Thus, in *Cantwell* v. *Connecticut*, 310 U.S. 296, 304-07 (1940), the Court recognized that, while the freedom to act could not be absolute, regulations would be care-

fully scrutinized to insure they did not unduly infringe upon religious conduct. *See also Fowler* v. *Rhode Island*, 345 U.S. 67, 69-70 (1953). This Court recently reaffirmed the long-established principle that infringements upon religiously-motivated conduct "must be subjected to strict scrutiny and could be justified only by proof by the State of a compelling interest." *Hobbie* v. *Unemployment Appeals Commission*, 480 U.S. 136 (1987) (citing *Sherbert* v. *Verner*, 374 U.S. 398 (1963); *Thomas* v. *Review Board*, 450 U.S. 707 (1981)); *see also Wisconsin* v. *Yoder*, 406 U.S. 205, 220 ("belief and action cannot be neatly confined in logic-tight compartments"); *McDaniel* v. *Paty*, 435 U.S. 618, 627-28 (1978) (plurality opinion).[17]

Recitation of this truism might appear superfluous, but for the fact that the court of appeal gave no indication whatsoever that religious conduct is entitled to strict (or for that matter, any) judicial scrutiny. Its constitutional analysis of this question was, "[W]hile religious *belief* is absolutely protected, religiously motivated *conduct* is not" (15a) (emphasis original). The court then subjected the conduct at issue to *no* constitutional scrutiny, as if the absence of *absolute* protection obviates the need for *any* constitutional analysis or protection. The trial court similarly failed to understand that the First Amendment draws no bright line between conduct and belief. From this fundamental misconception of the reach of the religion clauses, the lower courts permitted the plaintiff to place on trial the peaceful and voluntary religious practices of the Church.

2. This case presents the recurring and fundamental question whether religious, non-fraudulent speech and other peaceful religious practices may be deemed tortious by a jury's determination that they constitute outrageous conduct. The intentional infliction of emotional distress claim was clearly based, at least

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17 Strict judicial scrutiny is not limited to direct governmental regulation of religious conduct. "State laws whether statutory or common law, including tort rules, constitute state action." *Paul* v. *Watchtower Bible & Tract Society*, 819 F.2d 875, 880, 881 n.5 (9th Cir.), *cert. denied*, 484 U.S. 926 (1987) (citing *New York Times Co.* v. *Sullivan*, 376 U.S. 254, 265 (1964)).

in substantial part, on non-fraudulent[18] religious speech and peaceful religious conduct. This Court need look no further than the decision of the court of appeal, which relied exclusively on the June 6 meeting between Mull, Mr. and Mrs. Francis and Monroe Shearer (20a; R.T. 569-704). The court nowhere defined what it described as the "despicable acts" and the "constant and shameful pressures exerted on Mr. Mull to part with his money" (20a). The transcript, however, consists largely of Mrs. Francis setting forth Church teachings with respect to lying, breaking promises to the Church, and losing trust in one's spiritual leader, often by reference to the Bible, in the context of Mull refusing to repay the Church for the money it claimed it lent to him. Mrs. Francis also arguably suggested that Mull would not make his ascension to heaven because of his actions, that he had "sinned," that he was effectively withdrawing himself from the true Church, and that Mrs. Francis lacked the power to forgive him.

The court of appeal ignored the fact that, in support of his emotional distress claim, Mull repeatedly emphasized that Mrs. Francis had labeled him the beast of blasphemy and the serpent,[19] that this terrified Mull, and even suggested that this caused his tongue thrusting and his multiple sclerosis. Mull also emphasized threats of divine retribution and threats of expulsion from the church, the purported practice of decreeing "against" individuals and institutions, and the "coercive persuasion" as causing emotional distress.[20]

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18 Speech concerning matters of religious belief or doctrine by its nature cannot be deemed fraudulent. *United States* v. *Ballard*, 322 U.S. 78 (1944); *cf. Molko* v. *Holy Spirit Association*, 46 Cal.3d 1092, 1114-19, 252 Cal.Rptr. 122, 762 P.2d 46 (1988) (religiously motivated speech concerning secular facts, as opposed to matters of religious faith, may be deemed fraudulent), *cert. denied*, 109 S.Ct. 2110 (1989).

19 Mrs. Francis explained that the beast of blasphemy was a Biblical reference, Holy Bible, New Testament, Revelations 13:1-6, and that she had given a teaching relating that Mull was "playing the role of the mouthpiece of the beast of blasphemy" by attacking God, the saints, and the Church (R.T. 2592-94).

20 Among the acts alleged in the Amended Cross-Complaint to have caused emotional distress were "threats of expulsion from the 'order' and threats that [Mull's] soul would suffer eternal damnation in Hell," and that

The question whether the states may impose liability for intentional infliction of emotional distress or other intangible torts arising out of non-fraudulent religious speech or peaceful religious practices is thus directly raised by this case. The burden imposed upon the free exercise of religion by permitting tort liability for religious speech or peaceful religious practices, such as the speech and practices which underlay Mull's emotional distress claim, is manifest. No church can "free[ly] exercise" its religion under the threat of such inquiry and judgment. Adjudication of such disputes "would . . . declare open season on churches and their followers." L. Tribe, *American Constitutional Law* 1235 (2d ed. 1988). And the actual imposition of huge judgments such as the judgment below carries with it the real threat of crippling or destroying churches or religions. *Molko* v. *Holy Spirit Association*, 179 Cal.App.3d 450, 224 Cal.Rptr. 817, 834 (1986), *reversed in part on other grounds*, 46 Cal.3d 1092, 252 Cal.Rptr. 122, 762 P.2d 46 (1988), *cert. denied*, 109 S.Ct. 2110 (1989); *see, e.g.*, *Wollersheim* v. *Church of Scientology of California*, 212 Cal.App.3d 872, 260 Cal.Rptr. 331, 354 (1989) (jury awarded 195 percent of Church's net worth).

This Court's cases under the free speech clause explicitly recognize that such so-called "threatening" speech must be protected in any context, at least so long as it is not likely to lead to imminent lawless action. Thus, in *NAACP* v. *Claiborne Hardware Co.*, 458 U.S. 886 (1982), this Court noted that "[p]etitioners admittedly sought to persuade others to join the boycott through social pressure and the 'threat' of social ostracism," but then held that "[s]peech does not lose its protected character . . . simply because it may embarrass or coerce them into action." *Id.* at 909-10; *see also Organization For A Better Austin* v. *Keefe*, 402 U.S. 415, 419 (1971) ("The claim that the expressions were intended to exercise a coercive impact on respondent does not remove them from the reach of the First Amendment. . . . so long as the means are peaceful the communication need not meet standards of acceptability."); *cf.*

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the Church "utilized 'coercive persuasion' under the guise of being the cross-complainant's spiritual and religious advisers" to obtain his signature on the promissory notes and to deprive him of his funds (¶¶ 24, 25, 33, 36, 39, 40).

Cantwell, *supra*, 310 U.S. at 309 (offensive religious speech to willing listener does not constitute breach of peace).[21] Indeed, in other cases California courts have recognized that religiously threatening speech or "threats of divine retribution," similar to the speech here, are protected under the First Amendment. *See Molko*, *supra*, 46 Cal.3d at 1120, 1123-24; *In re Estate of Supple*, 247 Cal.App.2d 410, 55 Cal.Rptr. 542, 543-45 (1966), *cert. denied*, 389 U.S. 820 (1967).[22]

In *Hustler Magazine* v. *Falwell*, 485 U.S. 46, 108 S.Ct. 876 (1988), this Court held that a highly offensive parody of Reverend Jerry Falwell could not be actionable under a claim of intentional infliction of emotional distress, even if it were intended to inflict emotional distress and in fact did so. The Court concluded that there was no "principled standard" to separate the Falwell parody from more traditional political cartoons in terms of constitutional protection, 108 S.Ct. at 881, and stated that, "we are quite sure that the pejorative description 'outrageous' does not supply one," *id.* at 881-82. The Court's fear that the "inherent subjectiveness" of the term "outrageousness" "would allow a jury to impose liability on the basis of the jurors' tastes or views, or perhaps on the basis of their dislike of a particular expression," *id.* at 882, is even more apt where religious belief and practice are at issue. Religious beliefs tend to be among the most strongly held and exclusive points of view, and they uniquely engender controversy, hostility, rivalry and prejudice. It is objectively unreasonable to expect that jurors will be able to put aside their own sacred beliefs and biases when confronted with opposing or novel religious claims, especially given the well-known history of public opprobrium for unconventional religious societies. *See*, *e.g.*,

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21 This Court's First Amendment cases reflect frequent cross-pollination between doctrine developed in free speech cases and applied to free exercise cases. *See*, *e.g.*, *Sherbert* v. *Verner*, 374 U.S. 398, 404-06 (1963); *Cantwell* v. *Connecticut*, 310 U.S. 296, 306 (1940); *Heffron* v. *International Society for Krishna Consciousness, Inc.*, 452 U.S. 640, 647-49 (1981).

22 *But see Carrieri* v. *Bush*, 69 Wash.2d 536, 419 P.2d 132, 135-37 (Wash. 1966) (threats of damnation, along with ill will and "reckless" recommendations of family separation based upon Bible, renders pastor liable for alienation of affections).

Everson v. *Board of Education*, 330 U.S. 1, 8-14 (1947); *Murdock* v. *Commonwealth of Pennsylvania*, 319 U.S. 105, 116 (1943). In language that is directly applicable to this case, the Court in *Falwell* concluded:

> An "outrageousness" standard thus runs afoul of our longstanding refusal to allow damages to be awarded because the speech in question may have an adverse emotional impact on the audience. See *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 910 . . . .

108 S.Ct. at 882.

These cases clearly compel rejection of Mull's emotional distress claim based upon threats of divine retribution, labelling as the beast of blasphemy, decrees and other religious speech and peaceful practices. Even if, as in *Claiborne Hardware*, the purpose was to "coerce" him into action, and even if, as in *Falwell*, the purpose was to cause him severe emotional distress, the speech and conduct must be protected under both the free exercise and free speech clauses. Just as Falwell could not avoid the impact of the "actual malice" standard applicable in public figure defamation cases, *see New York Times Co.* v. *Sullivan*, 376 U.S. 254 (1964), by pleading an emotional distress claim, Mull cannot avoid the impact of *Ballard*, *supra*, by attempting to convert his claim from one of religious truth or falsity to the "inherent subjectiveness" of "outrageousness." Thus, the free exercise clause would clearly have barred a defamation claim based on being called the beast of blasphemy because the truth or falsity of this religiously-motivated speech is beyond "the ken of mortals," including civil courts and juries. *Ballard*, 322 U.S. at 86-87; *see Rasmussen* v. *Bennett*, 228 Mont. 106, 741 P.2d 755, 758-59 (1987); *McNair* v. *Worldwide Church of God*, 197 Cal.App.3d 363, 377-78, 242 Cal.Rptr. 823, 832-33 (1988) (remarks made while explaining Church doctrine subject to *New York Times* standard); *Hester* v. *Barnett*, 723 S.W.2d 544, 559 (Mo.App. 1987).

The question whether ex-members may recover for intangible or emotional distress torts arising out of peaceful and voluntary religious speech or practices continues to arise with increasing frequency in the lower courts, with inconsistent results. Those courts which have rejected such claims have recognized that the

free exercise clause must and does protect peaceful religious practices, particularly with respect to the relationship between a church and a member or ex-member.[23] Other courts, however, like the courts below, have held that such claims are indeed actionable, on the basis, *inter alia*, of the improper belief-conduct dichotomy relied upon by the court of appeal.[24] And some courts have found the claims to be actionable in certain circumstances, but not others.[25] These issues are pending in numerous cases throughout the country.

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23 *See, e.g., Paul, supra*, 819 F.2d at 880, 883 (holding that the Jehovah's Witnesses could not be held liable for intentional infliction of emotional distress and other "intangible-emotional torts" for the religious practice of "shunning," even assuming that the practice inflicted severe emotional distress; "[i]ntangible or emotional harms cannot ordinarily serve as a basis for maintaining a tort cause of action against a church for its practices—or against its members"); *Orlando* v. *Alamo*, 646 F.2d 1288, 1290 (8th Cir. 1981) ("though [the Alamo Foundation's] alleged indoctrination program, religious teachings and tactics may be viewed with some consternation, we hesitate to characterize them as intolerable in a civilized society"); *Van Schaik* v. *Church of Scientology*, 535 F.Supp. 1125, 1139 (D.Mass. 1982) (exhortation by Church "to sever family and marital ties and to depend solely on the Church for emotional support" does not support a claim for intentional infliction of emotional distress); *Baumgartner* v. *First Church of Christ, Scientist*, 141 Ill.App.3d 898, 490 N.E.2d 1319, 1326 (First Amendment forecloses claim of intentional disregard of decendent's health), *cert. denied*, 479 U.S. 915 (1986); *Rasmussen* v. *Bennett*, 228 Mont. 106, 741 P.2d 755 (1987) (statements based on ecclesiastical doctrine privileged in defamation action); *Christofferson* v. *Church of Scientology*, 57 Or.App. 203, 644 P.2d 577, 590 (1981) (rejecting emotional distress claim in absence of evidence of force or threats of force), *pet. denied*, 293 Or. 456, 650 P.2d 928 (1982), *cert. denied*, 459 U.S. 1206 (1983); *Radecki* v. *Schuckardt*, 50 Ohio App.2d 92, 361 N.E.2d 543, 544 (1976) (rejecting alienation of affection claim based on religious teachings); *Bradesku* v. *Antion*, 21 Ohio App.2d 67, 255 N.E.2d 265, 269 (1969) (accord).

24 *See, e.g., O'Neil* v. *Schuckardt*, 112 Idaho 472, 733 P.2d 693, 699-701 (1986) (upholding invasion of privacy claim based, in part, on religious practices); *Carrieri, supra*, 419 P.2d at 135-37.

25 *Molko*, 46 Cal.3d at 1120, 1123-24 (threats of "divine retribution" cannot state a claim for intentional infliction of emotional distress or false imprisonment, although misrepresentation and concealment of the church's identity for the purpose of inducing plaintiffs unknowingly to submit to the Church's practices may state an emotional distress claim); *In re The Bible Speaks (Dovydenas)*, 869 F.2d 628, 645 (1st Cir.) (allowing undue influence claim for purportedly solely secular misrepresentation by religious organiza-

This Court has never reviewed a case involving a church's tort liability to an ex-member for the church's peaceful religious speech or practices. The opinion of the court below fundamentally misconceives the nature and scope of constitutional protection in an area of increasing litigation and uneven judicial decision, and in an area of fundamental constitutional and practical concern. The Court should grant *certiorari* to insure that proper constitutional standards are applied and to make clear that, just as with political speech, juries should not be permitted to draw the line between protected and unprotected religious speech and practice by application of the vague and uncertain standard of "outrageous conduct." *Hustler Magazine* v. *Falwell, supra.*

3. As the court of appeal noted, the "coercive persuasion" evidence of decreeing and the "strict regimen" at Summit University was relevant to each of Mull's claims, excluding only the assault claim (13a-14a). The case, therefore, raises the fundamental and recurring questions whether such peaceful and voluntarily entered into conduct ever may be the basis for tort

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tion to obtain funds from member), *cert. denied*, 58 U.S.L.W. 3213 (1989); *Bear* v. *Reformed Mennonite Church*, 462 Pa. 330, 341 A.2d 105, 107-08 (1975) (suggesting that shunning "may be an excessive interference within areas of paramount state concern," but also noting that "the First Amendment may present a complete and valid defense"; on remand, and after trial, case dismissed on First Amendment grounds (Pa. C.C.P. June 24, 1976)); *Wollersheim* v. *Church of Scientology*, 212 Cal.App.3d 872, 260 Cal.Rptr. 331, 344 (1989) (the religious practice of auditing when provided voluntarily is not actionable even if it inflicts severe emotional distress because "it is one of the functions of many religions to 'afflict the comfortable'—to deliberately generate deep psychological discomfort as a means of motivating 'sinners' to stop 'sinning,' " but upholding liability for other "coercive" actions even if found to be religious practices); *Hester* v. *Barnett*, 723 S.W.2d 544, 555, 560 (Mo.App. 1987) (no alienation of affection claim for "preachment of doctrine or advocacy of religious faith"; but "use of the pulpit as the pretext for the practice of religion, but as the occasion for intentional defamation" is actionable); *Madsen* v. *Erwin*, 395 Mass. 715, 481 N.E.2d 1160, 1167 (1985) (dismissing emotional distress claims, but allowing repleading if consistent with First Amendment standards); *Guinn* v. *Church of Christ of Collinsville*, 775 P.2d 766 (Okla. 1989) (First Amendment prohibits tort liability for ecclesiastical discipline imposed upon member, but not for discipline imposed after member withdraws from Church).

liability, and of how a court may draw the distinction, within the confines of the First Amendment, between the convert who is "legitimately" persuaded by the beliefs and practices of one religion from the convert who is "illegimately" persuaded by the beliefs and practices of another. Here, the lower courts permitted the jury to draw that line based on voluntary participation in constitutionally protected beliefs and practices.

There is no evidence that Mull, a middle-aged adult, was subjected to physical violence or restraint, or threats of violence or other unlawful acts while a member of the Church. Rather, the evidence of "coercive persuasion" rests largely on the core religious practice of decreeing and on a 12-week course voluntarily undertaken by Mull on two occasions, several years before the incidents that gave rise to Mull's claims. As a result of decreeing, a vegetarian diet, fasting, getting little sleep, colonics, and because he liked the teachings, he purportedly became a "slave" of the Church by the end of the first 12-week course in March 1975.

Mull's experts then purported to explain how this course and decreeing operated as a "thought reform" program, making Mull "supersuggestible" and afraid that he would not make his ascension to Heaven, and even suggesting he was placed into a hypnotic state for five years.

The First Amendment forbids precisely this sort of inquiry into the peaceful methods by which a person is persuaded to join a religion. The notion that individuals may be so easily "coerced" by peaceful religious indoctrination practices into becoming religious "slaves" is contrary to the very concept of a democractic society based on decisions made by individuals with free will, as reflected in the First Amendment. If individuals are so easily subject to "thought reform," then the concepts of "free exercise" and "free speech" are themselves meaningless anachronisms.

Even the terminology of this new tort theory—"coercive persuasion"—is in fundamental conflict with this Court's First Amendment jurisprudence. As noted, in *Claiborne Hardware*, *supra*, this Court used virtually identical language to describe the *protected* actions of the defendants therein. They "sought to *persuade*" through non-violent " 'threat[s]' " that may have "*coerce[d]*" others into action. 458 U.S. at 910 (emphasis

added);[26] *Keefe*, *supra*, 402 U.S. at 419; *cf. United States* v. *Kozminski*, 108 S.Ct. 2751, 2760-63 (1988) (involuntary servitude under Thirteenth Amendment and 18 U.S.C. § 1584 requires use or threatened use of physical or legal coercion, not psychological coercion). Imposition of liability for a religion's voluntary and peaceful conversion or indoctrination practices goes to the very heart of the First Amendment. The "right to the free exercise of religion unquestionably encompasses the right to preach, proselyte, and perform other religious functions." *McDaniel*, *supra*, 435 U.S. at 626; *see also Fowler*, *supra*, 345 U.S. at 69-70.

As petitioners' expert witnesses testified without contradiction, intensive indoctrination is a common feature of conversion from one religion to another, whether "new age" or "mainstream." Yet, it is inevitable that new religions are more dependent on converts than older, established religions. If courts are to enter into the business of monitoring peaceful, voluntary, but intensive conversion practices, the effect will inevitably be to favor older religions and non-proselytizing religions over newer, aggressively proselytizing religions, in contravention of the First Amendment. *See Larson* v. *Valente*, 456 U.S. 228, 246-47 n.23 (1983) (statute that "distinguishes between 'well-established churches' . . . and 'churches which are new and lacking in a constituency' " held unconstitutional).

Most courts that have addressed the question have held that a religious organization cannot be liable in tort for such a claim, because to do so would not only impose liability for religious practices that are not so improper as to justify government regulation, but would also of necessity require judicial scrutiny of the validity or credibility of a religion's dogma.[27]

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26 As here, the protected activities in *Claiborne Hardware* were not limited to pure speech. Boycotters watched over boycotted stores, maintained lists of boycott violators, picketed and engaged in "social ostracism." 458 U.S. at 903-04, 909. Here, the "coercive persuasion" involved various peaceful and voluntary conduct as well as teaching and decreeing.

27 *See Meroni* v. *Holy Spirit Association*, 119 A.D.2d 200, 506 N.Y.S.2d 174, 177 (1986) ("a method of religious indoctrination . . . is neither extreme nor outrageous when . . . the subjects of the so-called 'brainwashing' are voluntarily participating in the program, and the various

Not all courts, however, have adopted this constitutionally appropriate analysis. In *Molko*, *supra*, the California Supreme Court, in reversing the court of appeal, concluded that the "brainwashing" claim did raise a *triable* issue of fact, at least in the unique circumstances of that case. *Molko*, 46 Cal.3d at 1110-11, 1122.[28] However limited that court's decision, it clearly accepted the proposition that the issue of "coercive persuasion" could be presented to a jury. See also *Peterson* v. *Sorlien*, 299 N.W.2d 123, 129 (Minn. 1980), *cert. denied*, 450 U.S. 1031 (1981); *O'Neil*, *supra*, 733 P.2d at 699-700; *Wollersheim*, *supra*, 260 Cal.Rptr. at 336.[29]

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activities mentioned above [*fasting, chanting, physical exercises, cloistered living, confessions, lectures, and a highly structered work and study schedule*], which allegedly induced the 'mind control', are not considered by our society to be beyond all possible bounds of decency") (emphasis added); *Lewis* v. *Holy Spirit Ass'n*, 589 F.Supp. 10, 12 (D.Mass. 1983) ("Indoctrination and initiation procedures and conditions of membership in a religious organization are generally not subject to judicial review."); *Turner* v. *Unification Church*, 473 F.Supp. 367, 371 (D.R.I. 1978), *aff'd*, 602 F.2d 458 (1st Cir. 1979); *Katz* v. *Superior Court*, 73 Cal.App.3d 952, 141 Cal.Rptr. 234, 255 (1977) (whether change in life style induced by faith or by "coercive persuasion" necessarily requires inquiry into validity and appeal of beliefs); *George* v. *International Society for Krishna Consciousness of California*, 213 Cal.App.3d 802, 262 Cal.Rptr. 215, 236-37 (1989) (rejecting brainwashing theory expounded by [Dr. Margaret] Singer," because "[t]ort liability based on dietary restrictions, methods of worship, and communal living arrangements and schedules is just as surely inimical to the free exercise of religious liberty as that based on threats of divine retribution"); *Guardianship of Polin*, 675 P.2d 1013 (Okla. 1983), *cert. denied*, 469 U.S. 850 (1984); *Baumgartner*, *supra*, 490 N.E.2d at 1326; *Christofferson*, *supra*, 644 P.2d at 590-91.

28 The *Molko* decision was based on the limited theory that "fraudulent inducement [by concealing the Church's identity] into an atmosphere of coercive persuasion—the conduct at issue—is extreme and outrageous." *Molko*, 46 Cal.3d at 1122. The court did not hold that "coercive persuasion" without the fraudulent concealment could state an emotional distress claim. 46 Cal.3d at 1122. No such issue of fraudulent concealment of the Church's identity is at issue here.

29 Dr. Singer's "coercive persuasion" theory has not been limited to attacks on numerous minority religions. She has also presented her theory in tort cases involving Transcendental Meditation, *Kropinski* v. *World Plan Executive Council*, 853 F.2d 948 (D.C.Cir. 1988), "est" seminars, *Slee* v. *Werner Erhard*, No. N-84-497-JAC (D.Conn.), and Lifespring development

4. As noted, under *Ballard*, a jury may not directly evaluate the truth or falsity of religious beliefs, no matter how strange, irrational or "wrong" they may appear to most people. As important, evidence of "unusual" religious beliefs or practices may not be introduced at trial to impeach a witness, to denigrate a religion, or to instill fear and prejudice in a jury, even if the jury is not asked directly to evaluate the truth or falsity of that belief. "Delicacy in probing and sensitivity to permissible diversity is required, lest established creeds and dogmas be given an advantage over new and changing modes of religious belief." *Stevens* v. *Berger*, 428 F.Supp. 896, 900 (E.D.N.Y. 1977); *see Bradesku* v. *Antion*, 21 Ohio App.2d 67, 255 N.E.2d 265, 270 (1969) (evidence "ridiculing a religious practice substantially different from the prevailing culture of this community . . . tended to excite emotions" and is inadmissible); *O'Neil* v. *Schuckardt*, 112 Idaho 472, 733 P.2d 693, 703 (Donaldson, C.J., dissenting) (jury motivated by evidence depicting religion as a "cult"). Review is necessary to bring the

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programs, *Miller* v. *Lifespring, Inc.*, Civ. No. 8678590 (Super.Ct. San Francisco Cty.). Recently, Dr. Singer has branched out into such areas as franchise litigation involving a "Fortune 500" corporation, in which she claimed that the corporation's management techniques constituted "coercive influence." *Lowder* v. *Snap-On Tools Corp.*, No. 615484 (Cal.App.Dept. Super.Ct.). She has even testified on behalf of a mother accused of strangling her child, arguing that as a result of "thought reform" by a "new age" business concern, the defendant had diminished capacity. *California* v. *Fuller*, No. 11065 (Sup.Ct., Marin Cty.).

Dr. Singer's theories find little or no acceptance in the scientific community. Thus, the American Psychological Association and leading mental health professionals joined in a brief *Amicus Curiae* to the California Supreme Court in *Molko*, *supra*, in opposition to her theory. *See also*, *Kropinski*, 853 F.2d at 957 (no evidence that Dr. Singer's theory, "that techniques of thought reform may be effective in the absence of physical threats or coercion, has a significant following in the scientific community, let alone general acceptance"); *United States* v. *Kozminski*, 821 F.2d 1186, 1199-1211 (6th Cir. 1987) (Kruparsky, J., concurring) (finding similar "psychological hostage" theory "ridiculous" and an "invention"), *aff'd*, 108 S.Ct. 2751 (1988). Before massive tort liability may be imposed for peaceful religious practices and conduct based on such novel claims as "coercive persuasion," at a minimum there should be consensus within the scientific community that the theory is a valid explanation of human behavior. *Frye* v. *United States*, 293 F. 1013 (D.C.Cir. 1923).

decision below in line with this fundamental constitutional doctrine.[30]

The record below is permeated with evidence and argument by counsel intended to ridicule the Church, its spiritual leader, and its beliefs and practices. The questioning of Mr. Francis as to his belief that he is the reincarnation of Captain Cook, followed by the mocking question of plaintiff's counsel; the purported recreation of a religious ceremony; the questioning of witnesses as to how they could verify the messages that Mrs. Francis claimed came from the Ascended Masters; the ridiculing of Mrs. Francis' claim that she was called to move the Church to California by Jesus; and the sneering, sarcastic closing argument were all designed to cast the Church into disrepute with the jury and to appeal to the jury's perceived hostility to such "strange" beliefs and practices.[31]

Even more egregious was introduction of evidence designed to instill fear and hatred in the jury towards petitioners. This was done through reading of decrees and playing tapes of decrees on several occasions, by questioning each Church witness whether the Church decreed against individuals and Mull in particular, even though Mull himself never testified that he thought the Church decreed against him, and by wholly irrelevant references to Jonestown and Nazi Germany. The purpose of this testimony could only have been to inflame the jury by purporting to show that this Church was evil by association and in that it purportedly used loud, bizarre-sounding chants in an attempt to harm Mull. Indeed, the court of appeal found that because Mull "firmly believed [the Church's] teachings," the evidence corroborated Mull's claim "that after he began to speak out against the organization he feared for his and his daughter's safety" (14a). The court also found that the evi-

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30 Petitioners are not suggesting that *certiorari* should be granted because of one or two errors in the admissibility of evidence. Rather, the record reflects pervasive ridicule and denigration on religious grounds of the spiritual leader and teachings and practices of this religion.

31 The trial court's admission of testimony that Mrs. Francis had an adulterous affair, because "*we are dealing with somebody who holds herself out to be a messenger of God*" (R.T. 780) (emphasis added), further demonstrates that court's fundamental misapprehension of the religion clauses throughout this trial.

dence that "the goal of these decrees was to get the objects of the decrees to 'act the way we wanted them to act' " (14a-15a), impeached Mrs. Francis' more benign description of decrees.

Yet, the Constitution does not permit judicial inquiry into whether Mull believed decrees could harm him, whether Church members decreed "against Mull," or whether Mrs. Francis, through concerted prayer, tried to get Mull to act in a certain manner. None of this testimony or evidence of decrees had any relevance to Mull's claims, and disputes about the purpose of decrees and whether Mull was or was not decreed against is wholly improper impeachment testimony.

Review is mandated to insure that plaintiffs are not permitted to place on trial the validity of minority religious beliefs and practices through backdoor techniques such as utilized in the instant case. As noted, recent years have seen a plethora of religious tort litigation,[32] in which ex-members have sought to litigate the validity and effect of religious practices, both directly and indirectly. The size of the verdicts in many of these cases[33] suggests that juries indeed do become inflamed by evidence of strange and novel religious practices, as did the jury below. The use of evidence of religious beliefs and practices to inflame and prejudice juries is just as dangerous to religious institutions as the imposition of tort liability for those beliefs and practices, equally burdens free exercise, and entangles the courts in the intricacies of religious matters, in violation of the Establishment Clause.

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32 Indeed, the phenomenon has become so widespread that the American Bar Association Section of Tort and Insurance Practice recently sponsored an "ABA National Institute on Tort and Insurance", which resulted in the publication of a 429-page book on the subject. ABA Division for Professional Education, *Tort and Religion* (1989).

33 Recent jury verdicts have included the following: (1) $39 million in *Christofferson* v. *Church of Scientology*, No. A770405184 (Multnomah Cty. 1985), overturned by the trial court on a motion for mistrial; (2) $30 million in *Wollersheim* v. *Church of Scientology*, *supra*, 260 Cal.Rptr. 331, reduced to $2.5 million on appeal; (3) $32 million in *George* v. *ISKCON*, *supra*, 262 Cal.Rptr. 215, reduced to over $11 million by the trial court, and further reduced to $3 million on appeal; (4) $1,000,000 in *O'Neil*, *supra*, 733 P.2d 693, reduced on appeal to $250,000; (5) $390,000 against a local congregational church in *Guinn* v. *Church of Christ of Collinsville*, *supra*, 775 P.2d 766, reversed and remanded on appeal.

5. The trial court refused the petitioners' request for a special verdict, and so it is impossible to know on what basis the jury returned its verdict. It is extremely likely that the jury rested its decision on the constitutionally impermissible grounds that the religious indoctrination practices, decreeing, and threats of divine retribution were outrageous and actionable, and contributed to the fraud and other causes of action, as Mull's counsel argued, as presented in the testimony of Mull and his expert witness, and as the court of appeal's decision indicates (13a, 19a-20a).[34] But even if the possibility exists that the jury *might* have based its verdict solely on unprotected conduct, the verdict *must* be overturned, because the jury was not *limited* to such conduct. As aptly summarized and applied in *Founding Church of Scientology* v. *United States*, 409 F.2d 1146 (D.C. Cir.), *cert. denied*, 396 U.S. 963 (1969):

> of course, where a jury's general verdict *may* have rested upon grounds improper for First Amendment reasons, a reviewing court will not pause to speculate whether the jury's verdict was actually reached on other, and permissible grounds.

Id. at 1164 (emphasis original).

This Court has consistently applied this principle in a wide variety of constitutional cases for over half a century. *Stromberg* v. *California*, 283 U.S. 359, 367-68 (1931); *Gregory* v. *City of Chicago*, 394 U.S. 111, 113 (1969); *id.* at 123-124 (Black, J., concurring); *Street* v. *New York*, 394 U.S. 576, 586-590 (1969); *Zant* v. *Stephens*, 462 U.S. 862, 881-84 (1983). The rule was explicitly applied to state court civil tort proceedings in *New York Times Co.* v. *Sullivan*, 376 U.S. 254, 284 (1964); *see also United Mine Workers* v. *Gibbs*, 383 U.S. 715, 730-35 (1966); *Claiborne Hardware*, 458 U.S. at 917-18.[35]

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34 Because the court of appeal found no constitutional error, it did not consider the appropriate remedy.

35 The Court has applied a similar "harmless error" rule in cases involving constitutional error in criminal cases. *See Chapman* v. *California*, 386 U.S. 18, 24 (1967) (reversal is required unless "beneficiary of the error" proves the constitutional error is "harmless beyond a reasonable doubt"). This doctrine should be applied to First Amendment civil cases as well,

The Constitution also requires that a judgment must be reversed when the damages awarded have not been explicitly limited to those *proximately caused* by the unprotected conduct. *United Mine Workers*, 383 U.S. at 735. Thus, in *Claiborne Hardware*, this Court held that "the nonviolent elements" of the defendants' behavior were protected by the First Amendment, 458 U.S. at 915, and that "[o]nly those [business] losses proximately caused by unlawful conduct may be recovered," *id.* at 918. Noting the hopeless admixture of evidence of business losses resulting from protected and unprotected activity, the Court reversed on the ground that the judgment may have rested, at least in part, on the defendants' exercise of their First Amendment rights. *Id.* at 923.

As in *Claiborne Hardware*, the jury here was not limited to an award of damages only for injuries proximately caused by conduct unprotected by the free exercise clause. Because of the hopeless admixture of protected and purportedly unprotected activity, "[i]t is impossible to conclude that state power has not been exerted to compensate [Mull] for the direct consequences of nonviolent, constitutionally protected activity." *Id.*

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because the most stringent standards are necessary to ensure that a jury's verdict is not based on consideration of impermissible evidence. Such a step would be similar to the Court's application of the above-described *Stromberg* rule from criminal cases, where it was first developed, to First Amendment civil tort cases. Thus, even if the jury's verdict could somehow be found to be based on wholly secular conduct, making the *Stromberg* rule inapplicable, the admission of evidence and counsel's comments ridiculing and attacking the petitioners' religious beliefs and practices should be scrutinized for harmless error under the *Chapman* standard.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

ERIC M. LIEBERMAN
Counsel of Record
DAVID B. GOLDSTEIN
RABINOWITZ, BOUDIN, STANDARD,
KRINSKY & LIEBERMAN, P.C.
740 Broadway, 5th Floor
New York, New York 10003
(212) 254-1111

October 26, 1989

Counsel for Petitioners

APPENDICES

APPENDIX A

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

IN BANK

S010386

CHURCH UNIVERSAL & TRIUMPHANT INCORPORATED, ET AL.,

Cross-Defendants and Appellants,

v.

LINDA WITT, ETC.,

Cross-Complainant and Respondent.

ORDER DENYING REVIEW

Order Filed June 28, 1989

AFTER JUDGMENT BY THE COURT OF APPEAL
Second Appellate District, Division Five, No. B021187

Appellants' petition for review DENIED.

KENNARD, J., DID NOT PARTICIPATE.

APPENDIX B

OFFICE OF THE CLERK
COURT OF APPEAL
STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT
ROBERT N. WILSON, CLERK

DIVISION: 5 DATE: 05/08/89

Riordan & McKinzie
Kenneth Klein
300 South Grand Ave.
29th Floor
Los Angeles, CA 90071

RE: Church Universal & Triumphant, Inc., Etc.
VS.
Mull, Gregory
2 Civil B021187
Los Angeles NO. C358191

THE COURT:

PETITION FOR REHEARING IS DENIED.

APPENDIX C

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT
DIVISION FIVE

No. B021187
Super. Ct. No. C358191

CHURCH UNIVERSAL & TRIUMPHANT, INC. and
ELIZABETH CLARE PROPHET,

Plaintiffs, Cross-Defendants and Appellants,

v.

LINDA WITT, Executrix etc.,

Defendant, Cross-Complainant and Respondent.

Judgment Filed April 10, 1989

NOT TO BE PUBLISHED

APPEAL from a judgment of the Los Angeles County Superior Court, Alfred L. Margolis, Judge. Affirmed.

Riordan & McKinzie, Kenneth Klein and Sandra J. Levin for Plaintiffs, Cross-Defendants and Appellants.

Lawrence Levy and Lyle Francis Middleton for Defendant and Cross-Complainant Gregory Mull and for Respondent.

Church Universal and Triumphant, Inc. (CUT) and Elizabeth Clare Prophet appeal from a jury rendered judgment which awarded Gregory Mull,[1] a former member of CUT, compensatory and punitive damages totaling $1,563,300. Appellants contend that the trial court erred in allowing the introduction of irrelevant and prejudicial evidence and evidence protected by the First Amendment. They further contend that improper conduct of counsel prejudiced the jury and, finally, that there is no basis in law or fact to support the verdict. We affirm.

BACKGROUND

Viewing the evidence in the light most favorable to respondent (*California Teachers Assn.* v. *Board of Education* (1980) 109 Cal.App.3d 738, 748), we set forth certain facts as a brief introduction to the issues presented in this appeal.

Gregory Mull was a self-employed architect in San Francisco in the early 1970's. He was self-supporting, paid his bills, and owned a Victorian-style house in which he lived and worked.

Mr. Mull had a lifelong interest in religion and the quest for God. At the time relevant herein, he had no particular religious affiliation, but pursued his religious education through a meditation and Bible study group which he regularly held in his home. In 1973, a member of the study group introduced the teachings of CUT to the group. The majority of the members rejected the teachings and eventually left the study group. Mr. Mull thought the teachings somewhat strict, but the strictness also appealed to him. Members of CUT sought him out repeatedly. Their treatment made Mr. Mull feel important. He began to devote approximately 30 hours a week to CUT activities.

In 1974, Mr. Mull met Elizabeth Clare Prophet (Mrs. Prophet), spiritual head of CUT. She impressed him very much. Mrs. Prophet was interested in his work as an architect. Over time, he and Mrs. Prophet shared a number of activities,

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1 Linda Witt, Executrix for the estate of Mr. Mull, is the respondent herein.

and Mull believed their relationship was one of friendship. In addition, as a result of the teachings he received from CUT in various settings, he believed her to speak for God. At the request of Mrs. Prophet, Mull personally solicited donations for use by CUT. He mortgaged his home in order to make contributions to her and to CUT.

In 1979, Mr. Mull was asked by Mrs. Prophet and other members of CUT to move to "Camelot" to do various architectural projects. Camelot was CUT-owned property on which Mull believed $33,000,000 worth of buildings were to be constructed as the "New Jerusalem." He was requested to come immediately and invited to do so on his "own terms." He agreed to come if CUT would pay his expenses, which included the upkeep of his residence in San Francisco. He stated that he would need approximately $3,000 per month to cover various financial obligations. Mull did not ask for a salary or commission, although architects normally receive about 7 percent of the value of a project of this size, which in this case would have amounted to approximately $2,500,000.

Mr. Mull believed that he and CUT had reached an agreement, began to close down his architectural business in San Francisco, and moved to Camelot where he rendered numerous architectural services. However, CUT failed to cover Mull's expenses in a timely fashion and after about ten months, ceased to pay him at all. Mull lost his credit and eventually sold his home. CUT insisted that any payments it had made to Mull were loans. Mull left Camelot and withdrew from CUT. CUT filed a complaint against him for nonpayment of the alleged loans based on two promissory notes bearing Mull's signature, and Mull cross-complained against CUT, Mrs. Prophet, and other officials. The matter went forward on an amended cross-complaint which alleged assault, intentional infliction of emotional distress, fraud, breach of fiduciary relationship, cancellation of instruments, and recovery in quantum meruit.

After a six-week trial, the jury found in favor of Mr. Mull and awarded him $521,100 in compensatory damages against CUT and Mrs. Prophet, $521,100 in punitive damages against CUT, and $521,100 in punitive damages against Mrs. Prophet.

DISCUSSION

Appellants assert many errors.

I. *Asserted Evidentiary Errors.*

A. Appellants first contend that the trial court erred because it allowed the introduction of irrelevant and highly prejudicial evidence.

Only relevant evidence is admissible. (Evid. Code, § 350.) " 'Relevant evidence' means evidence, including evidence relevant to the credibility of a witness . . . , having any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action." (Evid. Code, § 210; *Marocco* v. *Ford Motor Co.* (1970) 7 Cal.App.3d 84, 91.) However, even relevant evidence may be excluded if its probative value is outweighed by the probability that its admission will create substantial danger of undue prejudice. (*Ibid.*; Evid. Code, § 352.)

1. *Clayton Brokerage and the Internal Revenue Service.*

Randall King, a former Church official and former husband of Mrs. Prophet, testified over objection that from about 1970 to 1973, CUT was called the Summit Lighthouse. He stated that he and Mrs. Prophet borrowed money from CUT and used it to speculate in the commodities market for their own investment portfolio. This activity led to litigation with Clayton Brokerage and an investigation by the Internal Revenue Services (I.R.S.). The I.R.S. issued a letter indicating that it intended to revoke the tax-exempt status of CUT. Fearing that the revocation would be the end of the organization, a parallel organization was begun as another corporation "hoping that the I.R.S. would not find out . . . ." The congregation was not told that there were two organizations; they were told that it had been revealed to Mrs. Prophet that a new name for their organization was to be Church Universal and Triumphant. Members made checks payable to the new organization, and the funds were diverted without their knowledge.[2] King also testified that

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2 Additional references to this subject were made during the examination of later witnesses and CUT objections were sustained.

after the parties settled the brokerage case and the case with the I.R.S., Summit Lighthouse and CUT were merged.

As appellants point out, there is no evidence connecting Mr. Mull to this activity. The only use of this evidence appears to be to show that because Mrs. Prophet may have been dishonest in the described incident, she was dishonest with respect to Mr. Mull under very different factual circumstances. These uncharged acts are not available to attack Mrs. Prophet's credibility as a witness or to prove her conduct with Mr. Mull on a specified occasion. (Evid. Code, §§ 787, 1101, subd. (a).)[3]

Having concluded that the evidence was inadmissible, the next issue is whether its admission requires reversal of the judgment. The test is that if it is reasonably probable that the jury's verdict would have been more favorable had the evidence not been received, then reversal is required. (*People* v. *Watson* (1956) 46 Cal.2d 818, 836.) While Mrs. Prophet was a key witness in her own defense and that of CUT and this testimony would be expected to damage her credibility, the record prior to the introduction of the contested evidence is replete with admissible evidence which overwhelmingly supports the verdict of the jury. Evidence which supports the verdict is discussed *post*.

2. *Clare De Bois.*

Appellants complain that over objection, evidence was admitted which showed that an official of CUT posing as a clairvoyant bilked an elderly woman (Clare De Bois) out of her life savings. Appellants misstate the record. The trial court terminated the questioning and effectively steered the examination away from this subject before any evidence came in regarding whether the CUT official, "a clairvoyant," had any contact

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3 Evidence Code section 787 provides, "Subject to Section 788 [impeachment by evidence of a prior felony conviction], evidence of specific instances of his conduct relevant only as tending to prove a trait of his character is inadmissible to attack or support the credibility of a witness."

Evidence Code section 1101, subdivision (a) provided in pertinent part at the time of trial, "[E]vidence of a person's character or a trait of his character (whether in the form of an opinion, evidence of reputation, or evidence of specific instances of his conduct) is inadmissible when offered to prove his conduct on a specified occasion."

with the woman, whether she parted with her money, and if so, under what circumstances. Three other questions on this subject occurring at other times in the trial were objected to by appellants, and the objections were sustained. We conclude there was no error.

3. *The Investment Club.*

Over objection, Mr. King, who had been in charge of an investment club within CUT, described the conditions under which CUT members were sometimes required to sign documents. He testified that certain CUT members were brought into a room and told by Mrs. Prophet that "Saint Germain," an Ascended Master,[4] had an "alchemical project" in which he invited them to participate, but that CUT could not explain the project to them. The members were asked to trust CUT because the Ascended Masters wanted them to do this and the project would be beneficial to everyone. The members were then asked one-by-one to go into another room and sign three documents. The contents of the documents were covered so that only the signature line was exposed. The members were told that the documents were legal documents, but that the contents could not then be disclosed. One-by-one, each member went into the room and signed the documents. Mr. King was then asked, "In your opinion, did those people have such a faith in [Mrs. Prophet] and [CUT] that they would do whatever was suggested for them to do without question?" Mr. King answered, "Absolutely."

This evidence was relevant. Prior to its admission, Mr. Mull testified that he had signed two promissory notes in favor of CUT. He stated that when he had been requested to sign these documents, which he had recognized as promissory notes, CUT's attorney had told him merely that the notes were needed to protect CUT and that Mull did not need an explanation. He also testified that at the time of the signing, he felt his mind was controlled by CUT. King's testimony evidenced a similar situa-

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4 Mrs. Prophet considered "Ascended Masters" to be her spiritual teachers. Among the religious figures included under this appellation were Jesus, Pope John XXIII and various luminaries from Eastern cultures.

tion: CUT members were told to sign unexplained legal documents which were purported to benefit the organization, and, inexplicably, they signed. King's testimony was highly probative with respect to Mr. Mull's defense that he felt compelled to sign the two notes. Therefore, the admission of this evidence was not unduly prejudicial to appellants.

4. *Buying Property in Other Names.*

Mrs. Prophet testified that CUT owns a 30,000 acre facility in Montana. Part of that Property had been the 12,000 acre Malcolm Forbes Ranch. Mrs. Prophet was asked if CUT had initially purchased the ranch in CUT's own name, and the following exchange occurred over objection by appellants:

> "A: I don't remember at the moment how the legal documents were transferred at the outset.
>
> "Q: Isn't it a fact that somebody went up there, and they would not sell to [CUT], and the property was purchased in someone else's name and then later transferred to [CUT]?
>
> " . . . . . .
>
> "A: I don't believe that that was the fact, but I do not remember at this time in what corporation name the property was bought or what trustee's name.
>
> " . . . . . .
>
> "There is the Summit Lighthouse, and there is Church Universal and Triumphant and there is Royal Teton Ranch Limited who have trustees and board members. I just do not remember at this time how those documents were written."

Even if the court erred in allowing the question, appellants were not unduly prejudiced since Mrs. Prophet never stated affirmatively that the subject property was purchased by an entity other than CUT.

5. *Lanello Reserves.*

Mr. King testified on cross-examination that he had at one time served on the board of Lanello Reserves, a "subsidiary" of CUT. On redirect examination, King testified over objection that Lanello Reserves was a profit making corporation which had been set up by CUT, and that CUT expensed some of its costs and salaries through Lanello Reserves. According to King, the result of these acts was reduced profits for Lanello Reserves, and taxes on the for-profit entity were thereby lessened. King further testified that Lanello Reserves also was set up to divert the I.R.S. "from investigating and auditing [CUT's] books." Appellants assert the court erred in allowing this testimony because they had not asked any questions on cross-examination about the purpose or function of Lanello Reserves.

Redirect examination ordinarily is confined to the scope of cross-examination (*Moore* v. *Re* (1933) 131 Cal.App. 557, 560; *People* v. *Barnes* (1947) 30 Cal.2d 524, 528), but the trial court in its discretion may relax this limitation (*Majors* v. *Connor* (1912) 162 Cal. 131, 136; 3 Witkin, Cal. Evid. (3d ed. 1986) § 2008, pp. 1967-1968). While the elicited testimony is irrelevant, there is no evidence that CUT engaged in anything more than tax avoidance as distinguished from tax evasion. The prejudice, if any, was minimal.

6. *Evidence of Adultery.*

Mr. King testified over objection that at a time when he was a CUT member, he had an affair with Mrs. Prophet while she was married to another. This evidence was irrelevant; however, as it detracted from the credibility of Mr. King, a primary witness for Mr. Mull, as well as from the credibility of Mrs. Prophet, we conclude that under the facts of this case the error was not so prejudicial as to merit reversal. (*People* v. *Watson*, *supra*, 46 Cal.2d at p. 836.)

7. *Evidence of Personal Wealth.*

Evidence was admitted over objection that Mrs. Prophet had been presented with a seven and one-half carat diamond "through one of our students"; donations were solicited from non-members to purchase a house in Malibu for her use; a house in Malibu was leased for approximately $30,000 a year, paid by members and non-members of CUT; and, finally, that in the late 1970's, while her salary from CUT ranged from about $500 to $650 a month, Mrs. Prophet, her four children, and King as her husband, actually received between $200,000 and $300,000 a year in money and benefits through CUT.

Where punitive damages are in issue, as they were in the case at bar, evidence of a defendant's wealth is properly admitted. (*Neal* v. *Farmers Ins. Exchange* (1978) 21 Cal.3d 910, 928.) This evidence was relevant.

King also testified that the existence of the beach house was kept from the general membership to avoid knowledge of Prophet's expensive lifestyle. Appellants complain that this and similar evidence was used to portray Mrs. Prophet as "a religious leader who tricks her followers into giving up their money while she herself lives in the lap of luxury."

The contested evidence described various ways in which Mrs. Prophet solicited gifts. There was no evidence offered here that she tricked someone into donating funds which were used for the beach house without the knowledge of the donor.[5]

8. *Evidence Regarding the Misuse of Highly Confidential Information.*

Testimony was received over objection that Dr. Yaney, a psychiatrist, disclosed to Mrs. Prophet confidential information

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5 Appellants also cite as error the ruling of the court which allowed the following question: "Isn't it a fact that the beach property was leased in Dr. Yaney's name because people didn't want to lease it to [CUT]? In violation of the assignment clause, [CUT] was then—the property was assigned to you [Mrs. Prophet] and Randall [King]?" Mrs. Prophet responded, "No, it is not true." Since questions and statements of counsel are not evidence, as the court later instructed the jury, and Mrs. Prophet answered in the negative, any error would be harmless.

about "rebellious" members of CUT whom she had sent to Yaney or his wife for counseling. Appellants also objected to testimony by their own expert witness elicited on cross-examination regarding hypothetical questions which described a situation analogous to the Yaney-Prophet relationship. Appellant's expert gave the opinion that a disclosure of confidential information under the described circumstances would be a violation of the psychoanalyst's oath, his oath as a medical doctor and as a psychiatrist, and the breaking of a professional moral code. The expert also testified that his personal opinion was that if information contained in a priest-penitent communication was disseminated back and forth between a spiritual leader and a psychiatrist, the spiritual leader would be breaking a deep trust. Appellants assert that the contested evidence was irrelevant, because it was unavailable to impeach Mrs. Prophet, was unduly prejudicial and there was no evidence that Mr. Mull ever consulted Dr. Yaney.

A review of Mrs. Prophet's testimony up to the point when the contested evidence was admitted shows only that she recommended people seek help from Dr. Yaney when they arrived with problems at CUT facilities. Therefore, the evidence was inadmissible for impeachment purposes.

The record reflects two references by Mr. Mull to psychiatrists. The first occurred during direct examination. Mull testified that when Mrs. Prophet learned that her secretary, Kathleen, who had recently married Mull, had criticized CUT, Prophet "kicked her out the next morning," and before Kathleen could come back to Camelot, she would have to get therapy, "but not to go to a regular therapist or they would talk her out of the organization." The second reference occurs in a tape recording made and transcribed by CUT. The subject of the recording is a two and one-half hour meeting between Mr. Mull and three CUT officials, including Mrs. Prophet, regarding the money CUT insisted Mull owed the organization.[6] Many topics arose during this meeting. In describing how CUT officials failed to cooperate in having various building projects executed according to Mr. Mull's plans, Mull stated, "I called

6 This meeting is further discussed below.

Monroe one day about the walk, as I talked to Ralph Yaney. It should be a slight curve. [Monroe] yells at me, 'Don't bother me with that.' "

Although evidence indicates that Mr. Mull was acquainted with Dr. Yaney, we have not found, nor has respondent pointed out, any evidence that there was a confidential relationship between them which was later violated. We also note that the cause of action for breach of fiduciary relationship alleged by Mr. Mull in his amended cross-complaint makes no reference to Yaney or to a counseling relationship, but rather refers to Mrs. Prophet in terms of a priest-penitent relationship. The contested evidence was irrelevant.

We conclude that the court erred in allowing this evidence. As discussed below, however, reversal is not warranted under the facts of this case. (*People* v. *Watson*, *supra*, 46 Cal.2d 818, 836.)

9. *Evidence That CUT "Inspired Fear and Hatred."*

(a) Appellants assert it was error to allow irrelevant, prejudicial evidence regarding conditions and routines at Summit University, a CUT-run, three-month residential program of intensive indoctrination regarding its beliefs and the standard of conduct expected of its members.

The testimony to which appellants object was given by various witnesses who attended Summit University during three-month periods ("quarters") occurring both before and after those attended by Mr. Mull. There was evidence regarding the highly structured atmosphere, strict vegetarian diet, frequent fasting, use of enemas and "colonics," long hours of chanting ("decreeing") followed by lectures on doctrine, sleep deprivation, isolation from family and friends, fear of CUT, and the need for counseling after withdrawing from membership. There was testimony that the strict regimen induced members to uncritically accept demands made upon them by CUT officials. Similar evidence given by Mr. Mull regarding his experiences at Summit University was relevant to his causes of action for breach of fiduciary relationship (further discussed below), intentional infliction of emotional distress, fraud, cancellation

of instruments, and quantum meruit. The subject evidence corroborated important aspects of Mull's testimony. There was no error.

(b) Appellants also objected to descriptions of an apparent Nazi-like salute encountered during one quarter at Summit University and testimony regarding how witnesses felt while living in the tightly structured environment maintained there. Given Mr. Mull's testimony regarding the numerous incidents of control and daily deprivation, the subject testimony does not rise to the level of undue prejudice.[7]

(c) Over objection, Mr. King gave evidence that CUT members "decreed" for and against individuals and organizations. Appellants assert that the court erred in allowing this testimony.

Prior to this evidence Mrs. Prophet had described "decrees" as "affirmations in the name of God that invoke His light and love and peace" and had stated that students at Summit University might engage in decreeing activities for as much as three hours a day. She further testified that the purpose of the activity was to place the person decreeing in a receptive state to God, and that it was dangerous only if at the time people decreed, their "vibrations" were not good.

Prior to Mrs. Prophet's testimony, Mr. Mull had stated that as many as ten hours a day might be devoted to decreeing at Summit University. As an example of decreeing, Mr. Mull described a bus trip with other students and with Mrs. Prophet in attendance, during which they circled hospitals and other areas and decreed for or against the subject "whichever was appropriate." Mull also testified that he firmly believed CUT teachings and that after he began to speak out against the organization he feared for his and his daughter's safety.

The objected to testimony by Mr. King impeached Mrs. Prophet and corroborated Mr. Mull by describing decrees as lengthy chants which were used for a number of purposes, including the discipline and control of CUT members. These latter goals were effected by requiring members to decree for

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7 We agree with appellants that the trial court did err in disallowing their questions which sought to elicit testimony from Kathleen Mull Mueller that she did not fear CUT after she was forced to leave Camelot.

many hours. King testified that he thought decreeing could be dangerous because the activity could lead to "kind of a hypnotic state where you are supersuggestible." He also stated that some decrees involved shouts, hand signals, and vitriolic language directed at organizations or persons (which could include former members) thought to oppose CUT. The goal of these decrees was to get the objects of the decrees to "act the way we wanted them to act." We conclude that the testimony was relevant and not unduly prejudicial.

B. Appellants contend that Mr. Mull impermissibly introduced evidence which called into question the validity and legitimacy of their religious beliefs and thus the judgment must be reversed.

1. *Text of a Decree.*

Appellants contend that the trial court erred in allowing into evidence the text of a decree entitled "Insert on Personal and Impersonal Hatred."

"[W]hile religious *belief* is absolutely protected, religiously motivated *conduct* is not. [Citations.]" (*Molko* v. *Holy Spirit Assn.* (1988) 46 Cal.3d 1092, 1112-1113.) Prior to admission of the subject evidence, Mr. Mull had previously testified regarding his fear for his and his daughter's safety. There also was ample evidence that he had been a fervent adherent of CUT doctrine and practices for many years, including the belief in the effectiveness of decreeing. Evidence that CUT members decreed against those who opposed the organization had also been received. The subject document included a blank space which one could reasonably infer was provided so that names could be inscribed therein and become the objects of the decree. Counsel for Mull inquired of various witnesses whether Mull's name had been so inscribed. The beliefs expressed in the decree were not called into question. We conclude that the admission of the document was proper.

2. *Reincarnation.*

Counsel for Mull inquired of Edward Francis, a CUT official and cross-defendant, if he considered himself to be the reincar-

nation of Captain Cook. Over objection, Mr. Francis was obliged to answer that he did. Counsel then continued, "Let me ask you this one as Mr. Francis instead of Captain Cook." No other questions were asked on this subject. Appellants contend that this inquiry was impermissible and damaged the credibility of a key witness.

"While a court can inquire into the sincerity of a person's beliefs, it may not judge the truth or falsity of those beliefs. (*United States* v. *Ballard* (1944) 322 U.S. 78, 86-88 [88 L.Ed. 1148, 1153-1155, 64 S.Ct. 882].)" (*Molko* v. *Holy Spirit Assn.*, *supra*, 46 Cal.3d 1092, 1112.) In the instant case, none of the allegations of the cross-complaint calls into question the religious beliefs of appellants, and it is not obvious that counsel intended to do so here. On the contrary, counsel cautioned witnesses that beliefs were not on trial. In addition, Don St. Michael, a witness who testified for Mr. Mull prior to the above exchange, made reference to his own belief in reincarnation.[8] Therefore, both sides suffered whatever negative connotations the jury might attach to this belief. We conclude there was no error.

3. *References to CUT.*

Appellants contend that a number of references by counsel for Mull to CUT teachings and practices amounted to impermissible ridicule of religious beliefs. We conclude from our review that the argument is without merit.

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8 "THE WITNESS: Well, while doing the decree, at a particular point where you were to say, 'Hail, Saint Germain,' and it was done in a multiple of three, they would raise their hand and bellow out much louder.

"Q BY MR. LEVY: Why don't you do it just as loud as you could and in the manner. I don't remember the decree, but that phrase, just the beginning of it.

"A Hail, Saint Germain.

"And it was terrorizing to me. And when I explained it to the teaching aids, I said I believe in reincarnation. Maybe I was in Auschwitz. I am born in 1947. This is the way we saluted the German flag in 1939.

"But it was one of the things I couldn't do in the decrees."

II. *Conduct of Counsel.*

Appellants allege numerous incidents of attorney misconduct which they believe compel reversal of the judgment. We have carefully reviewed the record with regard to each allegation and have concluded that the argument has no merit.

III. *The Judgment Is Supported by Law and by Substantial Evidence.*

A. *"Breach of Fiduciary Relationship."*

Appellants contend there is no basis in law for a cause of action for "breach of fiduciary relationship."

We have not discovered nor has respondent brought to our attention any case in which a plaintiff recovered under the subject designation. However, "[a]n action cannot be defeated merely because it is not properly named. [Citation.]" (*Porten* v. *University of San Francisco* (1976) 64 Cal.App.3d 825, 833.) "Mistaken labels and confusion of legal theory are not fatal," and if Mr. Mull's cross-complaint stated a cause of action on any theory, he was entitled to introduce evidence thereon. (*Ibid.*)

Public disclosure of a private fact is a recognized tort which occurs when such disclosure is offensive and objectionable to a reasonable person of ordinary sensibilities. (*Forsher* v. *Bugliosi* (1980) 26 Cal.3d 792, 809.) Under his cause of action entitled "Breach of Fiduciary Relationship," Mr. Mull alleged that he disclosed details of his personal life under assurances of privacy and guarantees of nondisclosure to Mrs. Prophet within a priest-penitent relationship and that Mrs. Prophet disclosed the information "to others including other church members and the local 'press.' " The elements of the tort are satisfied by this pleading.

At trial, substantial evidence, that is, evidence which is reasonable in nature, credible, and of solid value (*Estate of Teed* (1952) 112 Cal.App.2d 638, 644), was admitted which would support a finding that appellants were liable for public disclosure of private facts. Mr. Mull testified that early in his relationship with CUT, a member assured him that if he attended

Summit University, his religious questions would be answered. Mr. Mull began the 12-week residential program in January 1975. Students were required to write a "clearance letter" in which they were to record all the wrongs which they had committed, with whom, when, and where. The clearance letter served as a written confession. The students were told they would be forgiven only for those sins which were fully recorded in the clearance letters. They were also told that the clearance letters would be read solely by Mrs. Prophet in a special ceremony and burned immediately thereafter. Students were given several weeks to write their clearance letters. Mr. Mull, a man then in his mid-50's, wrote an extensive, ten-page letter. He disclosed information on his sex life, including homosexual encounters he had experienced as a young man. Other than this letter, he did not discuss his sexual past with anyone at CUT. He believed that everything he put into the clearance letter would be "gone forever" once it was burned. He trusted Mrs. Prophet to burn his letter, but he never saw it burned. Some years later, after Mr. Mull became disillusioned with CUT, he began to speak out against the organization. A ministerial group invited him to give several lectures and make a television appearance in Montana. During the course of one of his lectures, a member of CUT who was in the audience stood up and shouted that Mr. Mull was an impotent homosexual who hated Mrs. Prophet and whose business partner had run off with and married Mull's ex-wife.

We conclude that the necessary elements for public disclosure of private facts were adequately pleaded and proven.

B. *Fraud.*

Appellants argue that the cause of action for fraud is barred because the cross-complaint alleges that religious representations induced Mr. Mull to bestow services and gifts of money on CUT, and such representations are protected by the First Amendment. Appellants further argue that Mr. Mull failed to produce any evidence that any reliance on his part was justifiable.

Among the allegations of the cross-complaint are that appellants represented to Mull that in exchange for his " 'contributions' " of money and labor, appellants would provide him with "the necessities of life," including "expenses," and that these, as well as other representations, were made with the knowledge that appellants did not intend to provide the things represented. Thus, the element of misrepresentation was pleaded without reference to religious belief.

Furthermore, substantial evidence was introduced to prove that his reliance on the representations was justifiable. For example, both Mr. Mull and Mrs. Prophet testified that their relationship was one of friendship. Mull had known Prophet for more than five years before he was invited to move to Camelot. During this period, he had spent time with her in social as well as religious settings. They had shopped together for antiques on a number of occasions, and Mull had paid for their dinners out together. Prophet had visited his home alone and with her husband, and Mull had seen her home. Mull had advised Prophet on decorating and had given her passes to a merchandise mart to enable her and CUT to save money. The record is replete with evidence that Mull considered Prophet to be his spiritual leader. Before his move to Camelot, Mull believed Prophet spoke for God and would have done anything she told him to do. His invitation to move to Camelot came from Monroe Shearer, a board member of CUT whom Mull had known for some time. Shearer represented to Mull that he had consulted with Mrs. Prophet and the board prior to extending the offer. We conclude that substantial evidence supports a finding that Mr. Mull's reliance on the invitation to move to Camelot in exchange for room, board, and his expenses was reasonable.

C. *Intentional Infliction of Emotional Distress.*

Appellants contend that Mr. Mull failed to plead and prove outrageous conduct, and that there was insufficient evidence to support a finding that appellants intended to cause emotional distress or acted with reckless disregard of the probability of causing emotional distress.

A reading of the complaint reveals that this cause of action was adequately pleaded, and substantial evidence in the form of a transcript of a tape recording made and transcribed by CUT supports a finding that the intent or reckless disregard element of the tort was proven. The tape documents a meeting called by Prophet and other CUT officials to which Mr. Mull was summoned after he had been forced to leave Camelot. As one example of the many despicable acts perpetrated against Mr. Mull by Prophet and others of her organization, Prophet, fully aware that Mr. Mull was 58 years old, out of a job, with a college-age daughter to support, and approximately $5,500 in the bank, used her influence to extract from him a check for $5,489. The funds supposedly were earmarked for scholarships to enable children to attend CUT's "Montessori" school[9] and $489 was to pay tuition to Summit University for Kathleen's daughter. In spite of the constant and shameful pressures exerted on Mr. Mull to part with his money during this two and one-half hour meeting, these were the only causes to which he finally, and very reluctantly, agreed to give. As a result of this last "donation," Mull had so little money that he and his daughter were forced to get food from garbage bins from behind grocery stores. Substantial evidence supports a finding of liability under this cause of action.

D. *Assault.*

Appellants contend that Mr. Mull presented no evidence which demonstrated a threat of immediate physical contact as required by the jury instruction or that CUT's actions exceeded the scope of its privilege given that the events occurred on CUT property.

The subject jury instruction reads, "ASSAULT ¶ An act by one or more persons that reasonably places the victim in fear of imminent personal harm; proof of the ability to do the harm is

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9 Evidence was admitted that CUT's "Montessori" school had no recognized accreditation and was supported through CUT's general fund rather than through a separate fund specifically set aside for its support.

not required if his victim believes the other(s) have the ability." The court gave this instruction virtually verbatim.[10]

After Mr. Mull had withdrawn from CUT membership and had begun to publicly criticize the organization, he tried to attend a publicly advertised, CUT-sponsored square dance, to which he had also received a private invitation. After Mr. Mull and his party, which included his daughter, another couple, and a reporter, entered a public area of CUT property, a CUT official called Mull deranged, and guards, whom Mull knew to be trained in martial arts, came towards him with their hands raised. Mr. Mull testified that at that point he had an extreme fear that he and those accompanying him would be attacked. This evidence would support a finding that Mull reasonably feared imminent personal harm.

Mr. Mull further testified that when it became clear that he would not be allowed to attend the event, he and his party left. Since the square dance was a publicly advertised event, and there was no evidence that Mr. Mull or any of his party intended, or had the capability, to damage CUT property, the jury could reasonably find that CUT had exceeded its privilege to defend its property under the circumstances.

E. *Compensatory Damages and Quantum Meruit.*

Appellants argue that Mr. Mull did not present any evidence that would prove that he and appellants reasonably believed that he would be compensated for his architectural services beyond the compensation he received in the form of food, lodging, and the contested "expenses," and therefore the evidence does not support an award of $521,100 in compensatory damages. As discussed below, there was much for which Mr. Mull was entitled to be compensated.

We first consider the facts regarding Mr. Mull's move to Camelot. He testified that he was excited and elated about being invited to draw plans for the "New Jerusalem" at Came-

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10 "Assault is an act by one or more persons that reasonably places the victim in fear of imminent personal harm. Proof of the ability to do the harm is not required if the victim believes that the other or others have the ability."

lot. He estimated that it was a $33,000,000 project and looked forward to designing a number of significant buildings. However, what Mull did not know at the time he was invited to move to Camelot was that CUT had already decided to abandon the New Jerusalem project. Thus, any hoped-for professional prestige through association with this project, as well as increased importance within CUT, was lost to Mull before he even put pen to paper. (Nonetheless, Mr. Mull's plans were used by CUT to help raise funds even though the project had been secretly abandoned. With the help of Mull's drawings, one to two million dollars was raised within a few months and eight to ten million dollars more in pledges followed.)

His working conditions at Camelot also were not what Mull had expected. By giving Mull nearly impossible deadlines for the completion of drawings of various New Jerusalem buildings, Mull worked as many as 12 to 16 hours a day, 7 days a week, from January through October 1979, at which point CUT stopped paying him. In addition, his living quarters were spartan at best. These were not terms which Mull had proposed.

Mr. Mull lost income when he closed down his architectural business in San Francisco in order to effect his move to Camelot, and he was virtually without resources to restart his business after CUT stopped paying his expenses in November and told him to leave Camelot in May. As a result of CUT's holding back on payments for his expenses, Mr. Mull lost his credit. In addition, Prophet and CUT put pressure on Mull to sell his home for any price. CUT expected him to contribute $10,000 of the proceeds to the organization.[11] He reduced the price twice in order to realize a quick sale.

With regard to other subjects, since there was no special verdict or special findings of fact by the jury,[12] and since there

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11 Because Mull realized less than he had expected from the sale, he did not give CUT the money. Prophet testified that Mull's failure to pay CUT the $10,000 was one of the reasons she decided on legal action against him.

12 Appellants requested a special verdict form be given the jury. Their request was refused. Such decision is within the sound discretion of the trial court. (Code Civ. Proc., § 625; *Klemme* v. *Hoag Memorial Hospital Presbyterian* (1980) 103 Cal.App.3d 640, 645.) Appellants do not contend that the trial court abused its discretion.

are several valid causes of action under which compensatory damages could be awarded—e.g., public disclosure of private facts, intentional infliction of emotional distress, and assault—we cannot speculate how the jury apportioned damages among these causes of action. We conclude, however, that the evidence supports the award.

F. *Damages.*

Finally, appellants argue that the award of damages, both compensatory and punitive, was excessive. We conclude that this argument has no merit.

As discussed above, there was substantial evidence under several causes of action to support the award of compensatory damages. The punitive damages awarded here were not excessive in view of the ratio of punitives to compensatory damages (one to one for each of the two appellants). (See, e.g., *Downey Savings & Loan Assn.* v. *Ohio Casualty Ins. Co.* (1987) 189 Cal.App.3d 1072, 1097-1098.) The reprehensibility of the acts of appellants, as set forth above, in light of the whole record also supports the award. (*Neal* v. *Farmers Ins. Exchange* (1978) 21 Cal.3d 910, 928.) Finally, the wealth of appellants is to be considered since the purpose of punitive damages is to punish wrongdoers and thereby deter the commission of wrongful acts. (*Id.*, at p. 928, fn. 13.) Evidence was received regarding CUT's vast holdings of land and Mrs. Prophet's receipt of valuable gifts and other assets. We conclude that the award does not appear to be excessive as a matter of law or " 'so grossly disproportionate as to raise a presumption that it is the result of passion or prejudice.' " (*Cunningham* v. *Simpson* (1969) 1 Cal.3d 301, 308.)

We also note that the award was scrutinized by the trial court when it considered and denied appellants' motion for a new trial. The determination of the trial court is to be accorded great weight. (*Bertero* v. *National General Corp.* (1974) 13 Cal.3d 43, 64; *Chodos* v. *Insurance Co. of North America* (1981) 126 Cal.App.3d 86, 103.) We cannot conclude that the trial court erred.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED

LUCAS, P.J.

We concur:

BOREN, J.

KENNARD, J.*

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* Assigned by the Chairperson of the Judicial Council.

APPENDIX D

SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

No. C358191
Department 50

THE CHURCH UNIVERSAL & TRIUMPHANT

vs.

MULL, GREGORY

RULING ON SUBMITTED MOTIONS

Before: Honorable Alfred L. Margolis,
L. Noritake, Deputy Clerk

June 3, 1986

Counsel for Plaintiff: MEMEL, JACOB, PIERNO, GERSH & ELLSWORTH
BY: K. KLEIN & J. FRANK

Counsel for Defendant: LAWRENCE LEVY
LYLE FRANCIS MIDDLETON

On May 30, 1986, the Court took under submission the motions of plaintiff-cross-defendant for a new trial and for a judgment notwithstanding the verdict.

The Court has further considered the motions and they are denied. The motion of defendant-cross-complainant for sanctions is denied.

The Court takes this opportunity to thank Messers Levy, Middleton and Klein for their cooperation and presentation.

A copy of this minute order is sent via U.S. Mail this date to counsel as listed below.

LAWRENCE LEVY
14724 Ventura Blvd.
Suite 704
Sherman Oaks, CA 91403

LYLE FRANCIS MIDDLETON
2500 Wilshire Blvd.
Suite 810
Los Angeles, CA 90057

MEMEL, JACOBS,
PIERNO, GERSH
& ELLSWORTH
ATTN: K. KLEIN
1801 Century Park East
Twenty-Fifth Floor
Los Angeles, CA 90067